

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI -DADE COUNTY, FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

THE ORIGINAL
FILED ON:

MAR 19 2008

IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL.

**RECEIVER'S MOTION FOR A COURT ORDER APPROVING THE
MEDIATED SETTLEMENT OF THE INSURANCE CLAIMS BROUGHT
BY DB BILOXI, LLC, DB BILOXI, II, LLC AND DB BILOXI, III, LLC**

Receiver, Michael Goldberg, by and through undersigned counsel, moves this Court to enter an Order *Approving the Mediated Settlement of the Insurance Claims Brought by DB Biloxi, LLC, DB Biloxi, II, LLC and DB Biloxi, III, LLC*, and as grounds therefore states:

1. Michael Goldberg as Court Appointed Receiver over the Relief Defendants DB Biloxi, LLC, DB Biloxi, II, LLC and DB Biloxi, III, LLC, seeks a Court Order Approving the Mediated Settlement in the matter of DB Biloxi, LLC, DB Biloxi, II, LLC and DB Biloxi, III, LLC vs. Landmark Insurance Company, Case No. 06-004465 CA 10.

2. On December 11, 2007, Michael Goldberg was appointed by this Court to act as Receiver on behalf of the State of Florida Office of Financial Regulation over the defendants and Relief Defendants in this action.

3. Three of the Relief Defendants, DB Biloxi, LLC, DB Biloxi, II, LLC and DB Biloxi, III, LLC, are single purpose real estate development companies owned by Dana J. Berman. Each of these companies separately own property in Biloxi, Mississippi. These properties sustained significant damage during Hurricane Katrina in 2005, and collectively initiated a lawsuit against their insurance company to recover for windstorm damage.

4. Prior to the institution of this Receivership, this insurance litigation was being handled by Robert Parks, as trial counsel, and Mark Hicks, as appellate and trial support counsel. The Receiver came before this Court and sought approval of the attorney fee contracts regarding the representation, and the same was granted by this Court, without objection.

5. The Hurricane losses had been adjusted by public adjusting company Alex N. Sill and Company, pre-petition. The Receiver, post-petition, sought the approval of the previously entered into contracts with the public adjusting company, and same was granted without objection.

6. On Friday, March 14, 2008, a Court Ordered mediation was conducted by Thomas Scott, a former State Court Judge, Federal Court Judge and U.S. Attorney. In attendance at the mediation was the Receiver and his counsel, a corporate representative of M.A.M.C. Incorporated, and representatives of Landmark Insurance.

7. Also in attendance was a representative from each of the committees established by the Receiver with respect to the three Relief Defendants DB Biloxi, LLC, DB Biloxi, II, LLC and DB Biloxi, III, LLC.

8. After a seven hour mediation, the parties negotiated a compromise of the dispute. A copy of the settlement agreement is attached hereto as Exhibit "A."

9. This settlement agreement was approved and recommended by the Receiver based on the candid and frank discussions of the merits and weaknesses of the claims at the mediation. The settlement was recommended by the corporate representative of M.A.M.C. Incorporated and each of the representatives of the committees for each of the Relief Defendants.

10. Mediator Thomas Scott encouraged the parties to reach this compromise as he believed it to be in the best interest of the parties, in light of the risks and benefits to each side of taking this matter to trial.

11. The Receiver seeks Court authority, upon receipt of the settlement proceeds from the Defendant insurance company:

i. Pay 25% of the settlement proceeds to Robert Parks, pursuant to the attorney fee contract. Robert Parks, in accordance with the attached settlement agreement, is responsible for disbursing all attorneys' fees to Mark Hicks.

ii. To pay the charging lien of James D. Gassenheimer, P.A., in the amount of \$28,962.51 from the settlement proceeds and a payment of \$3,900.00 made by the defendant for fees for wrongful removal. (See attached A/R Register.)

iii. To pay Alex N. Sill and Company in accordance with the previously approved contract.

iv. To disburse costs to Robert L. Parks, P.A. Trust Account in accordance with the attached register of costs, in the amount of \$230,647.23.

v. For entry, upon Motion, of a Bar Order and approved release, authorize the Receiver to disburse the insurance proceeds in accordance with the attached schedule of recovery by each of the separate Relief Defendants.

WHEREFORE, the Receiver moves this Court for the aforementioned relief, and for such other relief as the Court deems just and appropriate to complete the intended purpose of the motion.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for the Receiver, Michael I. Goldberg
200 South Biscayne Boulevard, Suite 1000
Miami, Florida 33131
Telephone: (305) 755-9500
Facsimile: (305) 714-4340

By: _____


~~JAMES D. GASSENHEIMER~~
Florida Bar No. 959987

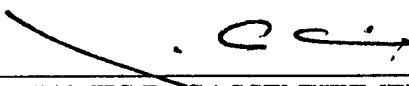
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile and U.S. Mail on this **19th day of March 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2nd Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA**, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire, Counsel for The Amid Companies and Amedia Family Investors**, DAVID AND JOSEPH,

P.L., 1001 Brickell Avenue, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; and to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191st Street, Aventura, Florida 33180.

Respectfully submitted,

By: _____


JAMES D. GASSENHEIMER
Florida Bar No. 959987

cc: The Honorable Thomas Wilson, Jr. (*via hand-delivery*)
Michael Goldberg, Esq., as Receiver (*via email*)
The Group of Lenders (*via email*)

1000763-1

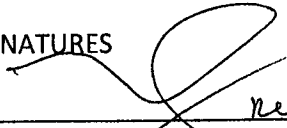
MEDIATION SETTLEMENT AGREEMENT

1. Within ten (10) days of the date of this agreement Defendant shall pay the Receiver, Michael Goldberg, the sum of Seven Million, Five-Hundred Thousand Dollars, \$7,500,000.
2. Michael Goldberg shall obtain court approval of the settlement and authorization to execute a release on behalf of plaintiffs, D.B. Biloxi, LLC, D.B. Biloxi II, LLC, and D.B. Biloxi, III, LLC, of all claims under the policies including, but not limited to, attorney's fees, costs and bad faith. Upon entry of the order approving the settlement, Michael Goldberg shall immediately disburse attorney's fees and costs to Robert L. Parks Trust Account. Robert L. Parks agrees to indemnify and hold harmless defendant from claims for attorney's fees, charging liens and litigation costs.
3. Michael Goldberg shall petition the Receivership court for entry of a bar Order enjoining all claims against Defendant by secured mortgage holders, the unit owners of Le Chateau Homeowner's Association, Inc., Le Chateau Homeowner's Association, Inc., Plaintiffs, their officers, directors and members and any lien holders or loss payees under the policies.
4. This is a memorandum outlining the terms of the settlement which shall be formalized and followed with a formal release to be agreed upon between the parties herein.

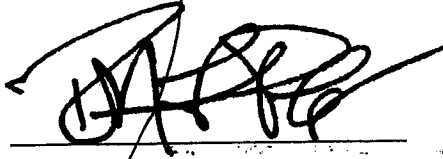
5. ~~IF~~ A dispute arises out of this Agreement, The mediator will resolve it.

Dated this 14th day of March, 2008

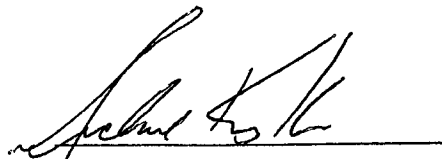
SIGNATURES


Receiver

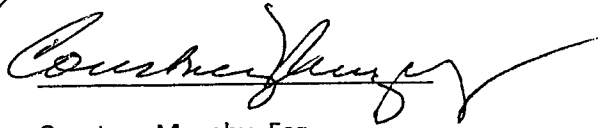
Michael Goldberg, Receiver
(Subject to Court Approval)



Robert L. Parks, Esq.
Counsel for Plaintiffs



Landmark American Insurance Company
By its authorized representative



Courtney Murphy, Esq.
Counsel for Defendant

In the event the Receiver is unable to obtain a bar order, this agreement shall be null & void and the Receiver shall return the \$7.5 million to the Defendant. In such event, the court shall reset the trial, with no

CM
MTC
LP

CM
MTC
MTC

Law Offices of Robert L. Parks, P.L.
Client Costs
All Transactions

<u>Date</u>	<u>Source Name</u>	<u>Memo</u>	<u>Amount</u>
DB BILOXI v. LANDMARK - Our File No. 6394			
07/01/2007	Costs from James Gassenheimer		3,015.29
07/10/2007	Taylor, Jonovic, White & Gendron	27178JR	465.80
07/24/2007	Black's Copy Services	1001092	442.55
08/07/2007	Neil B. Hall & Associates, LLC	Inv. No.: 89	2,200.00
08/07/2007	Neil B. Hall & Associates, LLC	Inv. No.: 335	5,929.50
09/01/2008	Accurant	08/01-08/31/07	68.00
09/01/2007	All Points Courier, Inc.	2007000422	8.00
09/10/2007	Gabrielle D'Alemberte	Legal Research	505.00
09/14/2007	AcuPak Incorporated	Inv. No.: 5500	126.35
10/12/2007	Robert L. Parks	Bank of America (10/12/07)	357.80
10/12/2007	Robert L. Parks	Bank of America (10/12/07)	317.11
10/13/2007	The Haggard Law Firm, P.A.	2/3 Cost Berman #6394	2,819.58
10/13/2007	Robert L. Parks	1/3 Costs Berman #66394	1,409.79
10/16/2007	Black's Copy Services	1002707	1,317.06
10/20/2007	Photo Reproduction	3213 @ 5.00	16,065.00
10/24/2007	Robert L. Parks	American Express (10/24/07)	430.21
11/01/2007	All Points Courier, Inc.	2007000504	23.00
11/19/2007	Black's Copy Services	1003244	57.78
11/29/2007	Service On-Site	81771	33.71
12/01/2007	Accurant	11/01-11/30/07	124.30
12/07/2007	AcuPak Incorporated	9315	64.48
12/11/2007	Service On-Site	82003	48.15
12/11/2007	Photo Reproduction	1135 @ 5.00	5,675.00
12/12/2007	Richard G. Henning Consulting	Invoice No. Parks 01	3,300.00
12/16/2007	Richard G. Henning Consulting	Invoice No. Parks 02	1,400.00
12/17/2007	Taylor, Jonovic, White & Gendron	30629JR	384.40
12/17/2007	Robert L. Parks	Med Art & Legal Graphics Co.	11,000.00
12/17/2007	Taylor, Jonovic, White & Gendron	30598JR	58.15
12/17/2008	Photo Reproduction	390 @ 5.00	1,950.00
12/21/2007	AcuPak Incorporated	9413	68.98
12/26/2007	Veritext Florida Reporting Co.	FL 86696	1,086.30
12/27/2007	Veritext Florida Reporting Co.	FL 86732	1,531.85
12/27/2007	Veritext Florida Reporting Co.	FL 86738	364.30
12/28/2007	Service On-Site	82137	16.05
01/01/2008	Accurant	12/01-12/31/08	100.85
01/01/2008	All Points Courier, Inc.	2008000031	11.00
01/04/2008	AcuPak Incorporated	9518	215.90
01/04/2008	Photo Reproduction	4870 @ 5.00	24,350.00
01/08/2008	Taylor, Jonovic, White & Gendron	31023JR	511.80
01/09/2008	The Dancel Group, Inc.	1923	142.00

Law Offices of Robert L. Parks, P.L.
Client Costs
All Transactions

<u>Date</u>	<u>Source Name</u>	<u>Memo</u>	<u>Amount</u>
01/10/2008	American Express	02/04/08 3-36009	1,290.74
01/16/2008	Gabrielle D'Alemberte	Citi Invoice 01/16/08	797.58
01/18/2008	AcuPak Incorporated	9609	86.71
01/22/2008	Coast-Wide Reporters	15722	338.50
02/01/2008	Accurint	01/01-01/31/08	28.60
02/01/2008	Black's Copy Services	1004400	1,592.05
02/01/2008	AT & T (Long Distance)	059 307 3055 001	25.34
02/01/2008	B&W Photocopies	3719 @ .25	929.75
02/01/2008	Photo Reproduction	1674 @ 5.00	8370.00
02/06/2008	Black's Copy Services	1004471	1,741.10
02/09/2008	Neil B. Hall & Associates, LLC	589	4,750.00
02/09/2008	Neil B. Hall & Associates, LLC	590	4,000.00
02/09/2008	Neil B. Hall & Associates, LLC	591	1,000.00
02/09/2008	Photo Reproduction	942 @ 5.00	4,710.00
02/11/2008	American Express	03/07/08 3-36009	725.00
02/12/2008	0001	Stamps / Postage	0.82
02/12/2008	0001	Postage 07/01 - 02/01/08	28.66
02/15/2008	Black's Copy Services	1004642	74.47
02/15/2008	RGS Investigations, Inc.	Berman/6394	750.00
02/15/2008	Photo Reproduction	119 @ 5.00	595.00
02/18/2008	AcuPak Incorporated	9817	339.97
02/19/2008	Taylor, Jonovic, White & Gendron	31807EJR	730.00
02/22/2008	Black's Copy Services	1004745	342.29
02/25/2008	Taylor, Jonovic, White & Gendron	31987EJR	300.00
02/25/2008	Taylor, Jonovic, White & Gendron	31989EJR	310.00
02/25/2008	Clausen Miller P.C.	2329	15,271.06
02/25/2008	Taylor, Jonovic, White & Gendron	31942EJR	1,032.80
02/27/2008	Cole Scott & Kissane, P.A.	CSK File No.: 5005-0169-00	2,000.00
02/27/2008	Med Art & Legal Graphics	2802	10,176.60
02/27/2008	Gabrielle D'Alemberte	Parking	30.00
02/29/2008	Gabrielle D'Alemberte	Parking	15.00
03/01/2008	Accurint	02/01-02/29/08	85.25
03/01/2008	0001	December Long Distance	4.15
03/01/2008	0001	January Long Distance	1.10
03/01/2008	0001	February Long Distance	2.65
03/01/2008	All Points Courier, Inc.	2008000111	49.00
03/01/2008	Gabrielle D'Alemberte	Westlaw Inv. 815568504	203.00
03/01/2008	Photo Reproduction	2001 @ 5.00	10,005.00
03/03/2008	Taylor, Jonovic, White & Gendron	32054EJR	582.00
03/03/2008	Taylor, Jonovic, White & Gendron	32066EJR	1,700.30
03/04/2008	Taylor, Jonovic, White & Gendron	32143EJR	2,899.80
03/04/2008	Taylor, Jonovic, White & Gendron	32137EJR	470.20
03/04/2008	Marty Scheckner, CPA (expert retainer)		3,500.00

Law Offices of Robert L. Parks, P.L.
Client Costs
All Transactions

<u>Date</u>	<u>Source Name</u>	<u>Memo</u>	<u>Amount</u>
03/04/2008	Taylor, Jonovic, White & Gendron	32139EJR	350.50
03/04/2008	Taylor, Jonovic, White & Gendron	32135EJR	725.00
03/04/2008	Taylor, Jonovic, White & Gendron	32092EJR	385.00
03/04/2008	Taylor, Jonovic, White & Gendron	32141EJR	830.40
03/04/2008	Taylor, Jonovic, White & Gendron	32093EJR	3,079.40
03/04/2008	Taylor, Jonovic, White & Gendron	32095EJR	265.80
03/04/2008	Alex N. Sill Company	8001397	2,223.86
03/06/2008	Gabrielle D'Alemberte	Travel Expenses MIA-ATL-CLE	1,966.34
03/13/2008	Taylor, Jonovic, White & Gendron	32289EJR	1,721.85
03/13/2008	Taylor, Jonovic, White & Gendron	32298EJR	3,393.05
03/14/2008	Taylor, Jonovic, White & Gendron	32309EJR	95.00
03/14/2008	Taylor, Jonovic, White & Gendron	32307EJR	468.75
03/14/2008	Taylor, Jonovic, White & Gendron	32308EJR	75.00
03/14/2008	Taylor, Jonovic, White & Gendron	32310EJR	95.00
03/14/2008	Taylor, Jonovic, White & Gendron	32306EJR	393.75
03/14/2008	Taylor, Jonovic, White & Gendron	32314EJR	602.60
03/14/2008	Med Art & Legal Graphics	2802	662.50
03/14/2008	Neil B. Hall & Associates, LLC	693	3,658.50
03/14/2008	Climatological Consulting Corporation	08-13	956.25
03/14/2008	Photo Reproduction	1373 @ 5.00	6,865.00
03/14/2008	Costs from Hicks & Kneale, PA	Invoice No. 23418	418.80
03/17/2008	Neil B. Hall & Associates, LLC	690	1,000.00
03/17/2008	Neil B. Hall & Associates, LLC	691	4,135.35
			<u>204,247.23</u>

Estimated Unpaid Costs (as of March 15, 2008)

	Expert discovery deposition fee	Kaczkowski	
	Transcripts- continued depo of Neil Hall on 3/8/08		800.00
	Expert discovery deposition fee	Randy LaMore	5000.00
	Expert discovery deposition fee	Steve Bowden, CPA	5000.00
	Expert discovery deposition fee	Brian Jarvinen	5000.00
	Expert discovery deposition fee	Trigwell	5000.00
	Expert discovery deposition fee	Mark Krzyzanowski	5000.00
3/13/2008	Rush Transcript- Hearing on Plaintiffs' Motion to Strike Def Expert		600.00
			<u>26400.00</u>

230647.23

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03/15/08
Accrual Basis

Law Offices of Robert L. Parks, P.L.
Client Costs
All Transactions

DB BILC

see attached register

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03/15/08
Accrual Basis

Law Offices of Robert L. Parks, P.L.
Client Costs
All Transactions

Law Offices of Robert L. Parks, P.L.
Client Costs
All Transactions

Cost report for BMC(Biloxi) v.Landmark Insurance (Substituted to Parks)

<i>Date</i>	<i>TaskCode</i>	<i>Payee</i>	<i>Description</i>	<i>Cost</i>	<i>Acct/Check No</i>
9/1/2006	copies	FedEx	FedEx to Michael Markham	\$22.86	operating acct Inv. 810
9/1/2006	copies	FedEx	FedEx to Michael Markham	\$16.60	operating acct Inv. 810
9/1/2006	copies	Lexis Nexis	Lexis Nexis Online Legal Research	\$1.66	operating acct Inv. 810
9/1/2006	copies	Lexis Nexis	Lexis Nexis Online Research	\$12.86	operating acct Inv. 810
9/1/2006	copies	Lexis Nexis	Lexis Nexis Online Research	\$122.17	operating acct Inv. 810
9/1/2006	copies	Lexis Nexis	Lexis Nexis Online Research	\$8.57	operating acct Inv. 810
9/28/2006	copies	James D. Gassenheim	Parking at Hearing	\$3.50	operating acct Inv. 810
11/1/2006	copies	Akerman Senterfitt	To conduct Mediation at Akerman Senterfitt	\$750.00	operating acct Inv. 925
11/1/2006	copies	Westlaw	Westlaw Online Research	\$206.78	operating acct Inv. 925
11/9/2006	copies	Neil B. Hall & Associate	Services Renderes by Neil B Hall	\$5,929.60	operating acct Inv. 925
11/30/2006	copies	Westlaw	Westlaw Online Research	\$814.51	operating acct Inv. 925
11/30/2006	copies	Westlaw	Westlaw Online Research	\$428.00	operating acct Inv. 925
12/8/2006	copies	Raymie Walsh, Esq.	Parking to attend meeting with Bad-Faith expert	\$22.50	operating acct Inv. 987
12/27/2006	copies	T. C. Mann, Inc.	RC Engle Martin & Associates, Inc	\$59.00	operating acct Inv. 987
1/1/2007	copies	James D. Gassenheim	Purchase of article regarding Katrina flood claims	\$4.95	operating acct Inv. 105
1/1/2007	copies	Westlaw	Westlaw Research	\$5.84	operating acct Inv. 105
1/4/2007	copies	Raymie Walsh, Esq.	Parking to attend for MPO Hearing	\$10.50	operating acct Inv. 105
2/1/2007	copies	Shana K. Rahavy	Parking to attend hearing on Defendant's Motion for severance of claims	\$7.75	operating acct Inv. 114
2/1/2007	copies	Shana K. Rahavy	Parking to attend hearing on Defendant's Motion to Transfer to Complex Litigation Section	\$3.50	operating acct Inv. 114
2/6/2007	copies	Shana K. Rahavy	Parking to attend hearing Plaintiff's Motion to produce dates for Corporate Representative for Deposition	\$6.00	operating acct Inv. 114
3/1/2007	copies	Esquire Deposition Ser	Scheduled deposition fee of P/W/M/K	\$260.00	operating acct Inv. 119
3/1/2007	copies	Neil B. Hall & Associate	Reports preparation	\$2,200.00	operating acct Inv. 119
3/8/2007	copies	Raymie Walsh, Esq.	Parking to attend Pre-trial conference	\$3.50	operating acct Inv. 119
3/23/2007	copies	Westlaw	Westlaw Research	\$37.93	operating acct Inv. 119
3/23/2007	copies	Westlaw	Westlaw Research	\$7.88	operating acct Inv. 119
3/27/2007	copies	Julio A. Mocega & Ass	Aattendacne of reporter at hearing before Judge Margarita Esquiroz	\$80.00	operating acct Inv. 119
3/27/2007	copies	Shana K. Rahavy	Parking for attendance to Def's MPO to Corp. Rep. for Depo	\$6.00	operating acct Inv. 119
4/17/2007	copies	Westlaw	Westlaw	\$17.49	operating acct Inv. 126
4/24/2007	copies	Cash	Recording fees and Certified Copy fees	\$25.50	operating acct Inv. 126
23/2007	copies	Westlaw	Westlaw	\$69.24	operating acct Inv. 138

Date	TaskCode	Payee	Description	Cost	Acct/Check No
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TOTAL COST ~~11,144.59~~

Total Cost By Account

○ operating acct

~~11,144.59~~
3015.09

12:39 PM

03/19/08

James D Gassenheimer PA

A/R Aging QuickZoom

As of March 19, 2008

Type	Date	Num	P. O. #	Name	Terms	Due Date
10057-364						
General Journal	6/6/2006	Fix 304		10057-364		
Payment	6/26/2006	1475		10057-364		
Invoice	10/20/2006	810		10057-364		10/20/2006
Invoice	11/16/2006	815		10057-364		11/16/2006
Invoice	1/9/2007	987		10057-364		1/9/2007
Invoice	2/7/2007	1053		10057-364		2/7/2007
Invoice	3/7/2007	1144		10057-364		3/7/2007
Invoice	5/9/2007	1260		10057-364		5/9/2007
Payment	6/8/2007	1015		10057-364		
Invoice	6/11/2007	1384		10057-364		6/11/2007
Total 10057-364						

TOTAL

12:39 PM

03/19/08

James D Gassenheimer PA
A/R Aging QuickZoom
As of March 19, 2008

<u>Aging</u>	<u>Open Balance</u>
	5,117.50
	-3,319.80
516	4,554.48
489	10,085.67
435	3,064.66
406	3,342.52
378	6,724.84
315	2,396.49
	-57.80
282	69.24
	<u>31,977.80</u>
	<u>31,977.80</u>

Less costs of 3015.29